

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MALLORY BEARD,

Plaintiff,

v.

Case No: 12-10726

THE AUTO CLUB INSURANCE
ASSOCIATION,

Hon. Nancy G. Edmunds

Defendant.

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**DEFENDANT'S UNOPPOSED MOTION TO AMEND THE JUDGMENT
TO INCLUDE COSTS AWARDED BY THE COURT**

Defendant Auto Club Insurance Association (“Auto Club”), by and through its undersigned counsel, hereby moves this Court pursuant to Fed.R.Civ.P.54(d) to amend the Judgment entered in this matter on February 17, 2014 to include the \$6,516.35 awarded to Auto Club in the Clerk’s March 12, 2014 Taxed Bill of Costs. Plaintiff’s motion to review the bill of costs was denied as moot by this Court on April 22, 2014, and thus pursuant to 28 U.S.C. § 1920, the allowed bill of costs should be “included in the judgment or decree.” On May 1, 2014, undersigned counsel spoke with Rex A. Burgess, counsel for Plaintiff, who indicated that he does not oppose the current motion.

WHEREFORE, Auto Club requests that the Court amend the Judgment entered in this case to include the \$6,516.35 award of costs in favor of Auto Club.

Respectfully submitted,

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Dated: May 1, 2014

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**BRIEF IN SUPPORT OF DEFENDANT'S UNOPPOSED MOTION TO
AMEND THE JUDGMENT TO INCLUDE COSTS AWARDED BY THE
COURT**

QUESTION PRESENTED

Should the Court amend the February 14, 2014 judgment to include the \$6,516.35 in costs awarded in favor of Defendant, when 28 U.S.C. § 1920 provides that an allowed award of costs should be added to the judgment, and Plaintiff does not oppose the request?

CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Cases

<i>Menovcik v. BASF Corp.</i> , 2012 U.S. Dist. LEXIS 125815 (E.D. Mich. Sept. 5, 2012).....	1, 2
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<i>Whitesell Corp. v. Whirlpool Corp.</i> , 2010 U.S. Dist. LEXIS 58619 (W.D. Mich. June 11, 2010).....	2
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Statutes

28 U.S.C. § 1920	i, 1, 2
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Rules

Fed.R.Civ.P.54	1, 2
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BACKGROUND

On February 14, 2014, this Court entered a judgment in Defendant Auto Club Insurance Association’s (“Auto Club”) favor following a jury verdict finding no cause of discrimination on Plaintiff’s Title VII claim. (Dkt. No. 66.) On March 12, 2014, the Clerk taxed costs in Auto Club’s favor, in the amount of \$6,516.35. (Dkt. No. 78.) On the same day, Plaintiff filed a notice of appeal from the judgment. (Dkt. No. 79.) Plaintiff subsequently moved to reduce the taxed bill of costs award, but the Court denied the motion on April 22, 2014. (Dkt. No. 86.)

ARGUMENT

Fed.R.Civ.P.54(d)(1) provides that “[u]nless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney’s fees—should be allowed to the prevailing party.” 28 U.S.C. § 1920 sets forth the allowable costs, and specifically provides that “[a] bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.”

Here, Auto Club has filed a bill of costs, it was taxed by the clerk, and Plaintiff’s challenge to the bill of costs has been rejected. That award has thus been allowed, and the Court should amend the judgment to include the \$6,516.35 of costs awarded to Auto Club, as called for in § 1920. *Menovcik v. BASF Corp.*, 2012 U.S. Dist. LEXIS 125815 (E.D. Mich. Sept. 5, 2012) is directly on point in support of this request. There, the court held that (1) the filing of a notice of

appeal does not divest the district court of jurisdiction to amend a judgment under Rule 54(d) to include costs to the prevailing party, *id.* at *3-4, and (2) that the “right to a judgment that reflects costs is clearly established by 28 U.S.C. § 1920, which provides that an allowed bill of costs should be included in the judgment or decree,” *id.* at *4-*6 (quoting *Whitesell Corp. v. Whirlpool Corp.*, No. 1:05-cv-679, 2010 U.S. Dist. LEXIS 58619, at *7 (W.D. Mich. June 11, 2010).) Because Auto Club has received an award of costs, “an amended judgment reflecting the costs specifically allowed by the Court should be entered.” *Menovcik*, 2012 U.S. Dist. LEXIS 125815, at *6.

CONCLUSION

The Court should amend the judgment to include the costs award of \$6,516.35 in favor of Auto Club.

Respectfully submitted,

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Dated: May 1, 2014

CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2014, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record.

s/Thomas J. Davis

Thomas J. Davis (D.C. #490033)

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